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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055269
Party	Defendant Tango Mango, LLC
Correspondence Address	REBECCA J STEMPIEN COYLE LEVY & GRADINETTI PO BOX 18385 WASHINGTON, DC 20036-8385 UNITED STATES mail@levygrandinetti.com
Submission	Opposition/Response to Motion
Filer's Name	Rebecca Stempien Coyle
Filer's e-mail	mail@levygrandinetti.com
Signature	/Rebecca Stempien Coyle/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Mango's Tropical Café, Inc.,)	Cancellation No. 92/055,269
)	
Petitioner,)	Registration No. 3,328,822
v.)	
)	Mark: TANGO MANGO
Tango Mango, LLC,)	
)	
Registrant.)	
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**REGISTRANT'S OPPOSITION TO PETITIONER'S RENEWED
MOTION FOR LEAVE TO FILE AMENDED PETITION TO CANCEL**

The Registrant, Tango Mango, LLC ("Registrant" or "Tango Mango"), respectfully submits this opposition to Petitioner Mango's Tropical Café, Inc.'s ("Petitioner") Renewed Motion for Leave to File Amended Petition to Cancel ("Motion to Amend"). (Dkt.18.)

I. FACTUAL BACKGROUND

In its Motion to Amend the Petitioner seeks to add two "newly" registered marks to the list of five marks it owns that are cited in its Petition to Cancel (the "Petitioner's new registrations"). The Petitioner's new registrations are Registration No. 4,190,731 for the mark MANGO'S, filed on January 11, 2012, and registered August 14, 2012; and Registration No. 4,224,643 for the mark MANGO'S TROPICAL CAFÉ, filed on December 22, 2011, and registered on October 16, 2012.

The filing dates of the applications, as well as the dates of registration, for both of these marks are well after the date of registration for Tango Mango's mark (the "Tango Mango Mark") that is the subject of these proceedings. The Tango Mango Mark was registered on November 6, 2007, as Registration No. 3,328,822. During the prosecution of the Petitioner's new

registrations, neither one received a refusal due to a likelihood of confusion with the Tango Mango Mark.

The Petitioner also seeks to add a new claim of abandonment. The abandonment claim is predicated on the Petitioner's assertions that the entity Tango Mango LLC, which assigned the Tango Mango Mark to a third party, Knightspin, LLC, does not exist and therefore could not have received a return assignment of the Tango Mango Mark. Therefore, under the Petitioner's argument, the Tango Mango Mark is abandoned because the entity currently identified as its registrant, Tango Mango LLC, does not exist.

II. ARGUMENT

"Where the moving party seeks to add a new claim or defense, and the proposed pleading thereof is legally insufficient, or would serve no useful purpose, the Board will normally deny the motion for leave to amend." *Polaris Industries, Inc. v. DC Comics*, 2000 TTAB LEXIS 816, *4, 59 U.S.P.Q.2d 1798 (T.T.A.B. Nov. 30, 2000) (citing *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937 (Fed. Cir. 1990)).

Additionally, "[a]ny party who delays filing a motion for leave to amend its pleading and, in so delaying causes prejudice to its adversary, is acting contrary to the spirit of Rule 15(a) and risks denial of that motion." *ChaCha Search, Inc. v. Grape Tech. Group, Inc.*, 2012 TTAB LEXIS 490, *3, 105 U.S.P.Q.2d 1298 (T.T.A.B. Dec. 27, 2012) (citing *Media Online Inc. v. El Clasificado Inc.*, 2008 TTAB LEXIS 52, *7, 88 U.S.P.Q.2d 1285, 1286 (T.T.A.B. Sept. 29, 2008). As explained by the Board in *Media Online Inc.*,

The Board also finds that respondent would suffer prejudice if petitioner is permitted to add the claims at this juncture. In this particular instance, petitioner did not claim that it learned of these newly asserted claims through discovery or was otherwise unable to learn about these new claims prior to or shortly after filing its first complaint. Petitioner therefore had ample time to file a motion for

leave to amend its pleading at an earlier stage in the proceeding. It is incumbent upon petitioner to identify all claims promptly in order to provide respondent with proper notice. Otherwise, allowing piecemeal prosecution of this case would unfairly prejudice respondent by increasing the time, effort, and money that respondent would be required to expend to defend against petitioner's challenge to its registration.

2008 TTAB LEXIS 52, at *7; *see also Trek Bicycle Corporation v. StyleTrek Ltd.*, 2001 TTAB LEXIS 841, 64 U.S.P.Q.2d 1540 (T.T.A.B. Dec. 20, 2001) (motion for leave denied when based on facts known prior to the start of the case and no explanation for delay).

A. The Petitioner's Amendment to Add Two "New" Registrations Should Be Denied

The Petitioner alleges, as a basis for adding its new registrations, that the Tango Mango Mark is likely to cause confusion with the Petitioner's Marks. However, the United States Patent and Trademark Office has already determined that the Tango Mango Mark is not likely to cause confusion with the Petitioner's new registrations. Since the assertion of likelihood of confusion was already before the United States Patent and Trademark Office and no likelihood of confusion was found, the addition of the two new registrations requested by the Petitioner will serve no useful purpose.

Additionally, the Petitioner unduly delayed in bringing these two new registrations. As noted *supra*, these registrations were issued on August 14, 2012, and October 16, 2012. The Petitioner knew of the existence of these registrations for months before seeking to add either registration to this proceeding. Moreover, the Petitioner clearly knew of each of the underlying applications well before filing this cancellation proceeding. The Petitioner could have, and should have, included at least notice of these applications in its original petition. The Petitioner offers no reason for this delay. *See ChaCha Search, Inc.*, 2012 TTAB LEXIS 490 at *3; *Media*

Online Inc., 2008 TTAB LEXIS 52 at *7; and *Trek Bicycle Corporation*, 2001 TTAB LEXIS 841.

Discovery in this proceeding is scheduled to close on July 23, 2013. To allow the Petitioner to add two registrations, which it clearly knew about for months, at this late juncture would prejudice the Registrant who would need to conduct additional discovery on the Petitioner's new registrations.

B. The Petitioner's Amendment to Add an Abandonment Claim Should Be Denied

In regard to the Petitioner's newly asserted abandonment claim, this proposed claim is also legally insufficient and serves no useful purpose. The Petitioner alleges that the entity Tango Mango LLC does not exist and that, therefore, it could not have assigned, or received a return assignment for, the Tango Mango Mark. (Dkt. 18, paras. 15 through 17, and 19.) The Petitioner then asserts the Tango Mango Mark must be abandoned because Tango Mango LLC "does not exist as a legal entity and therefore cannot possibly be using the mark for which registration has been obtained." (Dkt. 18, para. 19.) However, under the Petitioner's own logic, the Tango Mango Mark remains owned by the original registrant, Tango Mango, Inc., and any abandonment claim would fail on its face.

If, according to the Petitioner's assertion, Tango Mango LLC does not exist and therefore could not have received an assignment for the Tango Mango Mark from Knightspin, LLC, then the reverse would be equally applicable. Tango Mango LLC would not have been able to assign the Tango Mango Mark to Knightspin, LLC, in the first place. This situation would equate to neither assignment having an effect, and the registration would have remained in the ownership of the original applicant and registrant, Tango Mango, Inc. The Petitioner's requested new claim

of abandonment is defeated on its face by its very own logic and is legally insufficient and serves no useful purpose. *See Giersch v. Scripps Networks*, 2007 TTAB LEXIS 64, *12, 85 U.S.P.Q.2d 1306 (T.T.A.B. June 6, 2007) (proposed amendments were denied as serving no useful purpose since the proposed amendments were facially unsupported).

Moreover, the Petitioner has unduly delayed in asserting this new claim. The Petitioner's abandonment claim is based entirely on facts that were, or could have been, within the Petitioner's knowledge at the time of filing. *See Media Online Inc.*, 2008 TTAB LEXIS 52, and *Trek Bicycle Corporation*, 2001 TTAB LEXIS 841. As in *Media Online Inc.*, the Petitioner relies on information received online and from the public records of the Massachusetts Secretary of State or the United States Patent and Trademark Office. *See* Dkt. 18, Exhibits B through E. Consulting these records are "actions which could quite easily have been undertaken prior to filing of the petition to cancel, or by any prompt investigation conducted immediately thereafter." *Media Online Inc.*, 2008 TTAB LEXIS 52, at *5. While the Petitioner states, almost in passing, that this evidence is "newly discovered," it offers no explanation why it did not undertake this investigation prior to filing the petition or immediately thereafter. The Petitioner offers no reason for its delay in bringing this new claim – which was not even part of the Petitioner's original motion to amend. *See* Dkt. 13. To allow the Petitioner to add a new claim at this juncture, based entirely on facts that it knew, or should have known about, would prejudice the Registrant through the Petitioner's "piecemeal prosecution of this case." *Media Online Inc.*, 2008 TTAB LEXIS 52, at *7.

III. CONCLUSION

Neither of the Petitioner's proposed amendments seeking to add two "new" registrations to the Petitioner's claim of a likelihood of confusion or a new claim of abandonment serves a

useful purpose, and the Petitioner delayed in bringing its Motion, prejudicing the Registrant.

Therefore, the Petitioner's Motion to Amend should be denied.¹

Respectfully submitted,

July 3, 2013
Date

/ Rebecca J. Stempien Coyle /
Rebecca J. Stempien Coyle
LEVY & GRANDINETTI
P.O. Box 18385
Washington, D.C. 20036

Telephone (202) 429-4560
Facsimile (202) 429-4564
mail@levygrandinetti.com

ATTORNEY FOR REGISTRANT

¹ The Registrant does not object to the removal of the Petitioner's claims of dilution.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing REGISTRANT'S OPPOSITION TO
PETITIONER'S RENEWED MOTION FOR LEAVE TO FILE AMENDED PETITION TO
CANCEL was served this date via e-mail on the Petitioner's attorneys as follows:

Mr. David K. Friedland
Mr. Jaime Vining
FRIEDLAND VINING, P.A.
1500 San Remo Avenue, Suite 200
Coral Gables, Florida 33146
dkf@friedlandvining.com
JRV@friedlandvining.com

July 3, 2013
Date

/ Rebecca J. Stempien Coyle /
Rebecca J. Stempien Coyle